Supreme Court, U.S.
FILED
DEC 11 2000
CLERK

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No. 00-571

In The

Supreme Court of the United States

RICK HUCKABY and JERI BOYD,

Petitioners,

v.

PENNSYLVANIA GENERAL INSURANCE COMPANY,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29(6), the following are the parent corporations and publicly held companies that own 10% or more of Respondent Pennsylvania General Insurance Company's stock:

1. General Accident Insurance Company (Respondent's new name since August, 1999)

2. CGU Corporation (Respondent's parent corporation)

3. CGU Holdings LLC (a parent corporation of 2.)

4. CGU International Holdings Luxembourg S.A. (a parent corporation of 2.)

5. CGU International Holdings B.V. (the parent corporation of 4.)

6. CGU Group B.V. (the parent corporation of 5.)

7. Commercial Union International Holdings Limited (the parent corporation of 6.)

8. Scottish Insurance Corporation Limited (the parent corporation of 3. and 7.)

9. CGU Insurance plc (the parent corporation of 8.)

10. CGU International Insurance plc (the parent corporation of 9.)

11. General Accident plc (the parent corporation of 10.)

12. CGNU plc (the parent corporation of 11., publicly traded on the London Stock Exchange)

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REASONS FOR DENYING THE WRIT

The sole question presented by the Petition is whether federal law requires that each claimant in a multi-claimant accident with a motor carrier may recover from the motor carrier's liability insurer at least the minimum dollar amount of liability insurance mandated by federal statutes and regulations regardless of the stated "per accident" policy limit which meets or exceeds the required minimum. Petitioners argue the Fifth Circuit's opinion improperly holds that Petitioners are not entitled to pursue collection of an additional $1,000,000 from Respondent because Respondent has already paid other claimants its per accident policy limit of $1,000,000 in settlements, which exceeds the required $750,000 minimum limits.

According to Petitioners, such a holding conflicts with the requirements of federal statutes and regulations mandating minimum limits of financial responsibility for motor carriers of property, and existing decisions stating the general purpose of those statutes and regulations. However, the Fifth Circuit's opinion does not conflict with the relevant statutes, regulations or other courts' decisions. The purported conflict does not exist, and arises only from Petitioners' ignoring relevant portions of the cited statutes and regulations, and quoting statements of the general purpose of those statutes and regulations from other opinions in cases which did not present the issue here.

Under the facts of the present case, the Fifth Circuit's ruling was proper in all respects, as it followed the express language of the policy, the regulations, and the

only published opinion to consider the issue presented. Accordingly, Respondent respectfully requests the Court to deny the Petition.

I. Neither the Record Nor the Decision Below Raise the Question Presented by the Petition

This is a straight-forward contract interpretation case, and does not present the federal issue set forth in the petition. The issue in this case is simply the effect of the following language contained in the federally-mandated MPC-90 endorsement[1] attached to the liability insurance policy issued by Respondent:

> In consideration of the premium stated in the policy to which this endorsement is attached, the Company agrees to pay, *within the limits of liability prescribed herein*, any final judgment recovered against the insured for bodily injury to or death of any person . . . resulting from negligence in the operation, maintenance, or use of motor vehicles under certificate or permit issued to the insured by the Interstate Commerce Commission [now the Department of Transportation], or otherwise in interstate or foreign commerce . . . regardless of whether or not such motor vehicles are specifically described in the policy. . . .
>
> . . . .

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[1] The MPC-90 endorsement is apparently an old form no longer in use. In the Petition, Huckaby and Boyd mistakenly label the endorsement "BMC-90." The current endorsement is Form MCS-90, Illustration I to 49 C.F.R. § 387.15 (Pet. App. 48-52), and contains substantially the same text as the MPC-90.

> *The Company's liability for the amounts provided in this endorsement apply separately to each accident* and any payment under the policy because of one accident shall not operate to reduce the liability of the company for the payment of final judgments resulting from any other accident.
>
> The liability of the Company on each motor vehicle shall be the limits prescribed in 49 CFR 1043.2 (b)(1) [now 49 C.F.R. § 387.303], governing minimum amounts of insurance.

Pet. App. 41, 42 (italic emphasis added).

Petitioners argue the "any final judgment" language in the first-quoted paragraph of the endorsement means the policy's per accident limit of liability is unenforceable. However, Petitioners wilfully ignore the "within the limits of liability prescribed herein" language which modifies the "any final judgment language" and, inexplicably, further ignore the endorsement's later qualification of those limits, to wit: "[t]he Company's liability for the amounts provided in this endorsement apply separately to *each accident*." Pet. App. 42 (italic emphasis added).

Substantially the same language is contained in the current approved Form MCS-90 endorsement in 49 C.F.R. § 387.15. Pet App. 51, 52. As section 387.15 was prescribed by the Secretary of Transportation pursuant to the authority granted him or her by 49 U.S.C. § 13906(a)(1), the Fifth Circuit's holding applying that language as written does not conflict with the applicable federal statutes or regulations, or with any other decisions which are factually on point.

II. The Fifth Circuit's Ruling Does Not Conflict with Either 49 U.S.C. § 13906(a)(1) or the Authorities Cited in the Petition

A. The Ruling Does Not Contravene 49 U.S.C. § 13906(a)(1)

Under section 13906(a)(1) of the Motor Carrier Act of 1980, the Secretary of Transportation may register a motor carrier only if it files security in such an amount as the Secretary prescribes pursuant to section 31139. 49 U.S.C. § 13906(a)(1). Under section 31139(b), the Secretary must prescribe regulations to require minimum levels of financial responsibility for transporting property of at least $750,000. 49 U.S.C. § 31139(b). As directed by section 31139(b), the Secretary has prescribed those required regulations under 49 C.F.R. §§ 387.1-387.17.

Pursuant to 49 C.F.R. § 387.7(a), a motor carrier of property must obtain the minimum level of financial responsibility prescribed in 49 C.F.R. § 387.9. Pet. App. 44. Under section 387.9, the minimum level of financial responsibility required for transporting non-hazardous property is $750,000, mirroring the requirement of 49 U.S.C. § 13906(a)(1). Pet. App. 46, 47. Pursuant to 49 C.F.R. § 387.15, a motor carrier may comply with section 387.7(a) by obtaining a policy of liability insurance containing a Form MCS-90, set out in full as Illustration I to section 387.15. Pet. App. 48-52. That form contains essentially the same language as the MPC-90 endorsement at issue in this case.

Based on the plain meaning of the language contained in the endorsement, the minimum liability insurance required by the MPC-90 endorsement is expressly

subject to the applicable per accident policy limit. That language was authorized by the Secretary of Transportation under the authority expressly granted to him or her under 49 U.S.C. § 13906(a)(1). Thus, the Fifth Circuit's ruling enforcing the express language of the policy does not conflict with section 13906(a)(1) as Petitioners contend.

B. The Ruling Does Not Conflict with the Authorities Cited

In their attempt to manufacture a federal issue, Petitioners quote portions of discussions of the general purpose of the MPC-90 endorsement from cases which did not present the same issue as here. Petitioners erroneously contend their chosen quoted language means the per accident policy limit must be ignored and the insurer's liability under the policy is limitlessly extended beyond the stated policy limit by way of the MPC-90 endorsement.

The MPC-90 endorsement is a financial responsibility endorsement. The public policy behind the endorsement is to assure that injured members of the public would be able to satisfy judgments against negligent truckers. *Canal Ins. Co. v. First Gen. Ins. Co.*, 889 F.2d 604, 611 (5th Cir. 1989); *Industrial Indem. Co. v. Truax Truck Line, Inc.*, 45 F.3d 986, 992 (5th Cir. 1995). As pointed out by the District Court, the purpose of the endorsement was well explained in the case of *Empire Fire & Marine Ins. Co. v. Guaranty Nat'l Ins. Co.*, 868 F.2d 357 (10th Cir. 1989):

> In the past, the use by truckers of leased or borrowed vehicles led to a number of abuses

> that threatened the public interest and the economic stability of the trucking industry. In some cases, ICC-licensed carriers used leased or interchanged vehicles to avoid safety regulations governing equipment and drivers. In other cases, the use of non-owned vehicles led to public confusion as to who was financially responsible for accidents caused by those vehicles.
>
> In order to address these abuses, Congress amended the Interstate Commerce Act to allow the ICC to prescribe regulations to insure that motor carriers would be financially responsible for the operation of vehicles certified to them.
>
> . . . .
>
> Thus the ICC endorsement that is the subject of this appeal had its origin in the ICC's desire that the public be adequately protected when a licensed carrier uses a leased vehicle to transport goods pursuant to an ICC certificate.

Id. at 362-63; Pet. App. 26, 27.

Thus the statute and regulations spawning the MPC-90 endorsement were intended to negate any policy language limiting coverage only to vehicles actually owned by a certified motor carrier. They were not intended to subject a motor carrier's insurer to unlimited liability beyond the minimum required per accident policy limits. *See also Prestige Cas. Co. v. Michigan Mut. Ins. Co.*, 99 F.3d 1340, 1342 (6th Cir. 1996).

By its own language the endorsement states the federally-required minimum limit applies on a per accident basis. The only published decision to consider the precise issue presented here enforced the endorsement as written

and correctly held that the language of the MPC-90 endorsement does not transform a liability insurance policy into an open-ended surety bond requiring payments in excess of the policy limit. *Hamm v. Canal Ins. Co.*, 10 F. Supp.2d 539 (M.D. N.C. 1998), *aff'd per curiam*, 178 F.3d 1283 (4th Cir. 1999) (unpublished table decision).

III. The Fifth Circuit's Ruling Does Not Have Far-Reaching Implications

This case does not present the far-reaching implications Petitioners contend. To the contrary, the regulations and the subject endorsement plainly and clearly announce their intent, and the existing decisions are consistent with that language and settled. Only were the Court to grant review and change the law to adopt Petitioners' position would there be far-reaching, negative implications.

If Petitioners were correct, a liability insurer who issued a $750,000 per accident minimum limits policy to a motor carrier later involved in a multi-fatality accident with a school bus carrying 50 children, for example, would be liable not for $750,000, but for $37,500,000. Such open-ended liability would be fraught with problems, not the least of which would be the impossibility of calculating and collecting sufficient premiums from policyholders to allow the insurers of the nation's motor carriers to operate solvently.

CONCLUSION

For the foregoing reasons, Respondent Pennsylvania General Insurance Company respectfully requests the Court to deny the Petition.

Respectfully submitted,

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